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## TRANSMITTAL FORM

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Filing Date	7/11/2003
First Named Inventor	Clifford, Jeffory Neil
Art Unit	3679
Examiner Name	Cottingham, John R.
Attorney Docket Number	14917.1

### ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
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### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Rigby, Thatcher, Andrus, Rigby & Moeller, Chartered		
Signature			
Printed name	Reed E. Andrus, Esq.		
Date	11/3/2004	Reg. No.	51,407

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Clifford, Jeffory Neil, et al.  
Appl. No. : 10/618,501  
Filed : 07/11/2003  
Title : ADJUSTABLE FENCE RAIL SUPPORTING AND POSITIONING  
ASSEMBLY AND METHOD FOR USING THE ASSEMBLY  
Grp./A.U. : 3679  
Examiner : Cottingham, John R.  
Docket No. : 14917.1

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**DECLARATION**

Dear Sir:

1. I am one of the inventors and applicants on the above-referenced patent application ("the present application"). I attended Idaho State University where I graduated with a degree in electronics. I also received additional training, among other fields, in engineering and drafting at the Eastern Idaho Technical College.

2. Since my graduation from Idaho State University, I have worked for more than 25 years as a technician and manager with various companies and businesses. In addition, I spent approximately 15 years in research and development of an adjustable fence rail supporting and positioning assembly. My background, education, training and experience enable me to understand the technology relating to the invention which is the subject of the present application and other related techniques and technologies.

3. During and prior to 2003 I, together with co-inventors listed in the above-captioned application, conceived of, developed and experimented with various fence rail supporting and positioning assemblies.

4. After considerable research and experimentation, I, together with co-inventors listed in the above-captioned application, developed a preferred adjustable fence rail supporting and positioning assembly and means for adjustably supporting and positioning fence rails in a simple, rapid, efficient, and sturdy fashion at a user-selected, user-modifiable elevation and at an user-selected, user modifiable angle without puncturing, damaging or defacing the fence rails, and without need of additional tools to configure a fence having optimum porosity, particularly for snow and wind fences. That preferred assembly is disclosed in the present application (U.S. Application No. 10/618,501) and includes a slotted member and a bracket member described more particularly in the present application with drawings as well as the amendment submitted herewith.

5. I recently read and am now familiar with the U.S. Patent No. 6,695,293 to Kamarad et al. ("Kamarad") which has been cited against the present application.

6. I note that the device in Kamarad does not teach or attempt to use a number of the present invention's functional elements. Among others, Kamarad does not teach the following combination of elements: (1) the first slot-engaging portion of the present invention's bracket member particularly including an L-shaped tab disposed inwardly and upwardly away from a lower remainder of the bracket member, the first slot-engaging portion terminating at an upper end of said bracket member; (2) the second slot-engaging portion of the present invention's

bracket member particularly including an inverted L-shaped tab disposed inwardly and downwardly away from an upper remainder of the bracket member, the second slot-engaging portion terminating at a lower end of the bracket member; and (3) a slotted member containing a plurality of uniformly-sized and uniformly-shaped non-vertical slots spaced at regular intervals along a length of the slotted member.

7. The combination of elements of the present invention, including those set forth in paragraph 6 above, allow for a firm, stable yet detachable connection between the bracket member (20) and the slotted member (15) to be rapidly and efficiently formed by: (1) initial angular insertion of the first slot-engaging portion (20B) into the first slot (30A), (2) subsequent pivotal movement of the bracket member (20) while inserted in the first slot (30A), and (3) subsequent horizontal insertion of the second slot-engaging portion (20C) of the bracket member (20) into a second slot (30B) among the plurality of slots (30). Thus, after first angularly inserting the first slot-engaging portion (20B) of a bracket member (20) into a first slot (30A) a fence installer may, using the leverage and support provided thereby, pivotally draw a lower remainder of the bracket member (20) – including the second slot-engaging portion (20C) thereof – inward toward a second slot (30B) for insertion therein and connection therewith. During research and development it was determined that this leverage and stability benefits a fence installer in circumstances when he contends with significant lateral or angular forces directed against a fence rail being installed like, for example, on occasions when the installer is installing and positioning a broad, substantially flat rail with a significant vertical dimension on a wind fence during a stiff wind.

8. By contrast to the present invention's slotted member with non-vertical slots, Kamarad teaches a "metal post 12" that "includes a plurality of oblique studs 14 " with "vertical pinholes 16". (U.S. Patent No. 6,695,293, Col. 3 lines 11-14; *see also* U.S. Patent No. 6,695,293, Col. 4, lines 52-53 & Col. 5 lines 40-42 & Col. 6 lines 24- 34 & Figs. 1 & 3.) (Emphasis added.) In contrast to the bracket member (20) of the present invention, the "locking pin 18" of the Kamarad patent is inserted vertically downward through "vertical . . . pinholes 16" to retain a "wire 20" in a "wire gap 24." (See U.S. Patent No. 6,695,293, Col. 4, lines 20-37 & Fig. 3.) In contrast to the present invention, the Kamarad reference does not disclose an assembly allowing a rail installer to first angularly insert a first slot-engaging portion (20B) of a bracket member (20) into a first slot (30A) and then – using the leverage and support provided thereby – to pivotally draw a lower remainder of the bracket member (20) against a fence rail and toward a second slot (30B) for insertion therein and connection therewith.

9. In contrast to the present invention, removal of the Kamarad "locking pin 18" is accomplished by the application of a force upward in a vertical direction against the "locking pin 18" as it is removed from the "vertical pinhole 16." By contrast to the "vertical pinhole 16" and "locking pin 18" of the Kamarad reference, the present invention's bracket member (20) is not removed from the slotted member (15) by simple application of a force upward in vertical direction (whether that force be occasioned by accumulation and expansion of ice beneath a snow fence, an upward nudge of a child's hand, an upward nudge of an animal's nose or some other source). Rather, the removal of the slotted member (15) of the present invention requires at least the following: (1) a first force directed upward against the bracket member (20) in a

generally vertical direction; (2) a second pivotal movement of the lower portion of the bracket member (20) outward away from the second slot (30B), the pivotal movement outward being initially concurrent with the exertion of the first force directed upward; and (3) subsequent angular withdrawal of the first slot-engaging portion (20B) from the first slot (30A). While easily, quickly and efficiently performed by an adult human fence disassembler, experimentation revealed that the foregoing sequence (in items (1), (2) and (3) of this paragraph) is not typically or easily generated, applied, or replicated by most elemental, environmental, faunal, or floral sources.

10. In addition, the "metal fence post with quick wire connection" disclosed in Kamarad does not specifically teach an assembly designed to configure a snow fence or a wind fence with porosity determined during the development of the present invention to be optimum. In particular, Kamarad does not specifically teach an assembly specifically designed to configure: (1) a fence having porosity of 35 percent and to alternatively configure an alternative fence having porosity of 50 percent; (2) a fence having a porosity of not less than 45 percent but no more than 50 percent, or (3) a fence having a porosity of not less than 30 percent but no more than 50 percent. Rather, the invention set forth in the Kamarad – as stated in Column 3, lines 35-39 of U.S. Patent No. 6,695,293 – involves the arrangement of "wires strands" at a distance "small enough to prevent livestock from crawling through."

11. Among other beneficial results produced by the preferred assembly noted in paragraph 4, above, are the performance of the functions noted in paragraph 4, hereinabove, and additionally those noted in paragraphs 7, 8 and 9, hereinabove.

12. It is my opinion, based on my experience, background, education and the many years of research and testing which culminated in the present invention that the invention fulfills long felt needs and succeeds in producing a functional, beneficial fence rail supporting and positioning assembly others have previously failed to produce. The results produced by the invention are beneficial and, at least in some respects and to the some degree, unexpected. Furthermore, Kamarad fails to disclose or teach important aspects of the present invention including, without limitation, those noted in paragraph 6, above.

13. The assembly of the present invention fills a number of long felt needs in the fence rail supporting and positioning field, particularly in that portion of the field relating to the erection of snow fences and wind fences. The invention provides an adjustable fence rail supporting and positioning assembly and means for adjustably supporting and positioning a fence rails in a simple, rapid, efficient, and sturdy fashion at a user-selected, user-modifiable elevation and at an user-selected, user modifiable angle without puncturing, damaging or defacing the fence rails, and without need of additional tools to configure a fence having optimum porosity. It further provides an assembly and means for accomplishing the foregoing in a manner that: (1) allows a rail installer to first angularly insert a first slot-engaging portion (20B) of a bracket member (20) into a first slot (30A) and then – using the leverage and support provided thereby – to pivotally draw a lower remainder of the bracket member (20) toward a second slot (30B) for insertion therein and connection therewith; and (2) while being easily, efficiently and rapidly disassembled by an adult human disassembler is not typically or easily disassembled by most elemental, environmental, faunal, floral or other force generating sources.

14. The long-felt need, commercial desirability and non-obviousness of the present invention are further evidenced by the fact that in the past year alone offers to purchase the assembly that is the subject of the present invention have exceeded \$3 million.

15. Based on the novel combination of elements of the present invention, the beneficial and in some respects unexpected beneficial results it has produced, its likelihood of commercial success, the long felt need it fills, and the failure of others like Kamarad to produce such an invention, the undersigned is of the opinion that the present invention is novel and not obvious.

16. The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statement and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true, and all statements made on information and belief are believed to be true.

DATED this 2 of November, 2004

  
Jeffery Neil Clifford